

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 164

HOUSE BILL 2024

AN ACT

AMENDING SECTIONS 38-711 AND 38-764, ARIZONA REVISED STATUTES; RELATING TO
THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-711, Arizona Revised Statutes, is amended to
3 read:

4 38-711. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Active member" means a member as defined in paragraph 22 23,
7 subdivision (b) of this section who satisfies the eligibility criteria
8 prescribed in section 38-727 and who is currently making member contributions
9 as prescribed in section 38-736.

10 2. "Actuarial equivalent" means equality in value of the aggregate
11 amounts expected to be received under two different forms of payment, based
12 on mortality and interest rate assumptions approved from time to time by the
13 board.

14 3. "ASRS" means the Arizona state retirement system established by
15 this article.

16 4. "Assets" means the resources of ASRS including all cash,
17 investments or securities.

18 5. "Average monthly compensation" means:

19 (a) For a member whose membership in ASRS commenced before January 1,
20 1984 and who left the member's contributions on deposit or reinstated
21 forfeited credited service pursuant to section 38-742 for a period of
22 employment that commenced before January 1, 1984, the monthly average of
23 compensation on which contributions were remitted during a period of sixty
24 consecutive months during which the member receives the highest compensation
25 within the last one hundred twenty months of credited service. Any month for
26 which no contributions are reported to ASRS or that falls within a period of
27 nonpaid or partially paid leave of absence or sabbatical leave shall be
28 excluded from the computation. The sixty consecutive months may entirely
29 precede, may be both before and after or may be completely after any excluded
30 months. If the member was employed for less than sixty consecutive months,
31 the average monthly compensation is based on the total consecutive months
32 worked.

33 (b) Effective July 1, 1985, the monthly average of compensation on
34 which contributions were remitted during a period of thirty-six consecutive
35 months during which a member receives the highest compensation within the
36 last one hundred twenty months of credited service. Any month for which no
37 contributions are reported to ASRS or that falls within a period of nonpaid
38 or partially paid leave of absence or sabbatical leave shall be excluded from
39 the computation. The thirty-six consecutive months may entirely precede, may
40 be both before and after or may be completely after any excluded months. If
41 the member was employed for less than thirty-six consecutive months, the
42 average monthly compensation shall be based on the total consecutive months
43 worked. This subdivision applies only to members whose membership in ASRS
44 was effective after December 31, 1983 or who agree in writing as a binding
45 condition of eligibility for being granted the benefit advantages available

1 under this subdivision to have their benefit computed on the basis of the
2 definition of compensation.

3 6. "Board" means the ASRS board established in section 38-713.

4 7. "Compensation" means the gross amount paid to a member by an
5 employer as salary or wages, including amounts that are subject to deferred
6 compensation or tax shelter agreements, for services rendered to or for an
7 employer, or that would have been paid to the member except for the member's
8 election or a legal requirement that all or part of the gross amount be used
9 for other purposes, but does not include amounts paid in excess of
10 compensation limits established in section 38-746. Compensation includes
11 amounts paid as salary or wages to a member by a second employer.
12 Compensation, as provided in paragraph 5, subdivision (b) of this section,
13 does not include:

14 (a) Lump sum payments, on termination of employment, for accumulated
15 vacation or annual leave, sick leave, compensatory time or any other form of
16 termination pay whether the payments are made in one payment or by
17 installments over a period of time.

18 (b) Damages, costs, attorney fees, interest or other penalties paid
19 pursuant to a court order or a compromise settlement or agreement to satisfy
20 a grievance or claim even though the amount of the payment is based in whole
21 or in part on previous salary or wage levels, except that, if the court order
22 or compromise settlement or agreement directs salary or wages to be paid for
23 a specific period of time, the payment is compensation for that specific
24 period of time. If the amount directed to be paid is less than the actual
25 salary or wages that would have been paid for the period if service had been
26 performed, the contributions for the period shall be based on the amount of
27 compensation that would have been paid if the service had been performed.

28 (c) Payment, at the member's option, in lieu of fringe benefits that
29 are normally paid for or provided by the employer.

30 (d) Merit awards pursuant to section 38-613 and performance bonuses
31 paid to assistant attorneys general pursuant to section 41-192.

32 8. "Contingent annuitant" means the person named by a member to
33 receive retirement income payable following a member's death after retirement
34 as provided in section 38-760.

35 9. "Credited service" means, subject to section 38-739, the number of
36 years standing to the member's credit on the books of ASRS during which the
37 member made the required contributions.

38 10. "CURRENT ANNUAL COMPENSATION" MEANS THE GREATER OF:

39 (a) ANNUALIZED COMPENSATION OF THE FULL PAY PERIOD IMMEDIATELY BEFORE
40 THE DATE OF A REQUEST TO ASRS TO PURCHASE CREDITED SERVICE PURSUANT TO
41 SECTION 38-743 OR 38-745.

42 (b) ANNUALIZED COMPENSATION OF THE PARTIAL YEAR IF THE MEMBER HAS LESS
43 THAN TWELVE MONTHS TOTAL CREDITED SERVICE ON THE DATE OF A REQUEST TO
44 PURCHASE CREDITED SERVICE PURSUANT TO SECTION 38-743 OR 38-745.

1 (c) THE SUM OF THE TWELVE MONTHS OF COMPENSATION IMMEDIATELY BEFORE
2 THE DATE OF A REQUEST TO ASRS TO PURCHASE CREDITED SERVICE PURSUANT TO
3 SECTION 38-743 OR 38-745.

4 (d) THE SUM OF THE THIRTY-SIX MONTHS OF COMPENSATION IMMEDIATELY
5 BEFORE THE DATE OF A REQUEST TO ASRS TO PURCHASE CREDITED SERVICE PURSUANT
6 TO SECTION 38-743 OR 38-745 DIVIDED BY THREE.

7 (e) IF THE MEMBER HAS RETIRED ONE OR MORE TIMES FROM ASRS, THE AVERAGE
8 MONTHLY COMPENSATION THAT WAS USED FOR CALCULATING THE MEMBER'S LAST PENSION
9 BENEFIT TIMES TWELVE.

10 ~~10.~~ 11. "Early retirement" means retirement before a member's normal
11 retirement date after five years of total credited service and attainment of
12 age fifty.

13 ~~11.~~ 12. "Effective date" means July 1, 1970, except with respect to
14 employers and members whose contributions to ASRS commence thereafter, the
15 effective date of their membership in ASRS is as specified in the applicable
16 joinder agreement.

17 ~~12.~~ 13. "Employer" means:

18 (a) This state.

19 (b) Participating political subdivisions.

20 ~~13.~~ 14. "Employer contributions" means all amounts paid into ASRS by
21 an employer on behalf of a member.

22 ~~14.~~ 15. "Fiscal year" means the period from July 1 of any year to June
23 30 of the following year.

24 ~~15.~~ 16. "Inactive member" means a member who previously made
25 contributions to ASRS and who satisfies each of the following:

26 (a) Has not retired.

27 (b) Is not eligible for active membership in ASRS.

28 (c) Is not currently making contributions to ASRS.

29 (d) Has not withdrawn contributions from ASRS.

30 ~~16.~~ 17. "Interest" means the assumed actuarial investment earnings
31 rate approved by the board.

32 ~~17.~~ 18. "Internal revenue code" means the United States internal
33 revenue code of 1986, as amended.

34 ~~18.~~ 19. "Investment management" means the persons, companies, banks,
35 insurance company investment funds, mutual fund companies, management or any
36 combinations of those entities that are appointed by ASRS and that have
37 responsibility and authority for investment of the monies of ASRS.

38 ~~19.~~ 20. "Late retirement" means retirement after normal retirement.

39 ~~20.~~ 21. "Leave of absence" means any unpaid leave authorized by the
40 employer, including leaves authorized for sickness or disability or to pursue
41 education or training.

42 ~~21.~~ 22. "Life annuity" means equal monthly installments payable during
43 the member's lifetime after retirement.

44 ~~22.~~ 23. "Member":

45 (a) Means any employee of an employer on the effective date.

1 (b) Means all employees of an employer who are eligible for membership
2 pursuant to section 38-727 and who are engaged to work at least twenty weeks
3 in each fiscal year and at least twenty hours each week.

4 (c) Means any person receiving a benefit under ASRS.

5 (d) Means any person who is a former active member of ASRS and who has
6 not withdrawn contributions from ASRS pursuant to section 38-740.

7 (e) Does not include any employee of an employer who is otherwise
8 eligible pursuant to this article and who begins service in a limited
9 appointment for not more than eighteen months on or after July 1, 1979. If
10 the employment exceeds eighteen months, the employee shall be covered by ASRS
11 as of the beginning of the nineteenth month of employment. In order to be
12 excluded under this subdivision, classifications of employees designated by
13 employers as limited appointments must be approved by the director.

14 (f) Does not include any leased employee. For the purposes of section
15 414(n) of the internal revenue code, "leased employee" means an individual
16 who:

17 (i) Is not otherwise an employee of an employer.

18 (ii) Pursuant to a leasing agreement between the employer and another
19 person, performs services for the employer on a substantially full-time basis
20 for at least one year.

21 (iii) Performs services under the primary direction or control of the
22 employer.

23 ~~23.~~ 24. "Member contributions" means all amounts paid to ASRS by a
24 member.

25 ~~24.~~ 25. "Normal costs" means costs of ASRS as computed under the
26 projected unit credit method of actuarial computation that would have arisen
27 if the benefits in effect at the time of the computation had always been in
28 effect from the time of earliest eligibility of the current members.

29 ~~25.~~ 26. "Normal retirement age" means the age at which a member
30 reaches the member's normal retirement date.

31 ~~26.~~ 27. "Normal retirement date" means the earliest of the following:

32 (a) A member's sixty-fifth birthday.

33 (b) A member's sixty-second birthday and completion of at least ten
34 years of credited service.

35 (c) The first day that the sum of a member's age and years of total
36 credited service equals eighty.

37 ~~27.~~ 28. "Political subdivision" means any political subdivision of
38 this state.

39 ~~28.~~ 29. "Retired member" means a member who is receiving retirement
40 benefits pursuant to this article.

41 ~~29.~~ 30. "Service year" means fiscal year, except that:

42 (a) If the normal work year required of a member is less than the full
43 fiscal year but is for a period of at least nine months, the service year is
44 the normal work year.

1 (b) For a salaried member employed on a contract basis under one
2 contract, or two or more consecutive contracts, for a total period of at
3 least nine months, the service year is the total period of the contract or
4 consecutive contracts.

5 (c) In determining average monthly compensation pursuant to paragraph
6 5 of this section, the service year is considered to be twelve months of
7 compensation.

8 ~~30-~~ 31. "State" means this state, including any department, office,
9 board, commission, agency, institution or other instrumentality of this
10 state.

11 ~~31-~~ 32. "Vested" means that a member is eligible to receive a future
12 retirement benefit.

13 Sec. 2. Section 38-764, Arizona Revised Statutes, is amended to read:

14 38-764. Commencement of retirement; payment of retirement
15 benefits; lump sum payments

16 A. Retirement is deemed to commence on a date elected by the member.
17 That date shall not be earlier than the day following the date of termination
18 of employment, the date ASRS receives the member's completed retirement
19 application or the date specified by the member pursuant to subsection f J
20 OF THIS SECTION.

21 B. Except as provided in subsection C OF THIS SECTION, all retirement
22 benefits:

23 1. Are normally payable in monthly installments beginning on the
24 commencement of retirement as prescribed in subsection A OF THIS SECTION.

25 2. Continue to and include the first day of the month in which death
26 occurs or continue until the date of their cessation in accordance with any
27 optional method of payment that may have been elected.

28 C. In the case of incapacity of a retired member or contingent
29 annuitant, or in the case of any other emergency, as determined by the board,
30 the board may make the payment to or on behalf of the retired member or
31 contingent annuitant or to another person or persons the board determines to
32 be lawfully entitled to receive payment. The payment is payment for the
33 account of the retired member or contingent annuitant and all persons
34 entitled to payment and, to the extent of the payment, is a full and complete
35 discharge of all liability of the board or ASRS, or both, under or in
36 connection with ASRS.

37 D. Except as provided in subsection E OF THIS SECTION, at the request
38 of a retired member, a retired member's guardian or a court appointed
39 conservator, the board may pay any increase in retirement benefits or the
40 entire retirement benefit in a lump sum payment based on the actuarial
41 present value of the benefit or the increase in the benefit if the payment
42 of the benefits would result in ineligibility, reduction or elimination of
43 social service programs provided to the member by this state, its political
44 subdivisions or the federal government.

1 E. The board may pay the entire retirement benefit in a lump sum
2 pursuant to subsection D OF THIS SECTION only if continued membership in ASRS
3 will result in additional requests for lump sum payments based on cost of
4 living adjustments or the establishment of minimum benefit awards.

5 F. If any benefit that is payable as a series of periodic payments
6 amounts to less than twenty dollars per month, the board, in its sole
7 discretion and based on uniform rules it establishes, may order the amount
8 to be paid quarterly, semiannually, annually or in a lump sum. A member who
9 receives a lump sum payment pursuant to this subsection remains a member of
10 ASRS.

11 G. All distributions of retirement benefits to a member shall be
12 distributed either:

13 1. Over a period not exceeding the life of the member or over the
14 lives of the member and the member's contingent annuitant.

15 2. Over a period not extending beyond the life expectancy of the
16 member or the life expectancy of the member and the member's contingent
17 annuitant.

18 H. A member may elect to cancel the effective date of retirement
19 within thirty days of retirement or before the member's receipt of retirement
20 benefits, whichever is later.

21 I. Notwithstanding any other provision of this article, all
22 distributions under this article shall be made in accordance with the
23 distribution requirements of section 401(a)(9) of the internal revenue code.

24 J. A member who attains a normal retirement date may retire at any
25 time without terminating employment if the member is employed for less than
26 the hours required for active membership pursuant to section 38-711,
27 paragraph 22 23, subdivision (b).

28 Sec. 3. Recalculation of costs of redeemed active military
29 service; refund

30 A. If a retired member or a deceased retired member whose beneficiary
31 is receiving benefits on account of a deceased retired member of the Arizona
32 state retirement system received credited service for active military service
33 from the Arizona state retirement system before July 20, 1996, the Arizona
34 state retirement system shall recalculate the cost of that credited service
35 as provided in this section effective retroactively to the date of receipt
36 of the credited service.

37 B. If an active member of the Arizona state retirement system received
38 credited service for active military service from the Arizona state
39 retirement system before July 20, 1996, the Arizona state retirement system
40 shall recalculate the cost of that credited service as provided in this
41 section effective retroactively to the date of receipt of the credited
42 service.

43 C. The Arizona state retirement system shall determine the amount a
44 member described in subsection A or B of this section would have paid for
45 credited service for active military service on or after July 20, 1996.

1 D. The Arizona state retirement system shall subtract the amount
2 determined pursuant to subsection C of this section from the amount the
3 member actually paid for credited service for active military service. If
4 the difference is greater than zero and notwithstanding any other law, the
5 Arizona state retirement system shall refund the difference to the active
6 member, the retired member or the retired member's beneficiary. The Arizona
7 state retirement system shall pay a refund pursuant to this subsection to an
8 active member at the time it makes retirement benefit payments.

9 E. The Arizona state retirement system shall pay interest on any
10 amounts refunded pursuant to this section. The interest shall be compounded
11 annually at the interest rate assumption approved by the board from time to
12 time for actuarial equivalency.

13 F. Before retirement, an active member who is entitled to a payment
14 pursuant to subsections D and E of this section may apply the amount of the
15 payment to a purchase of additional active military service pursuant to
16 section 38-745, Arizona Revised Statutes, if the member is eligible to
17 purchase that service.

18 Sec. 4. Member notification; publication

19 The Arizona state retirement system shall notify members who might be
20 eligible for a refund pursuant to section 3 of this act by publishing a
21 summary of the provisions of section 3 of this act in the following
22 publications according to the following schedule:

23 1. In four successive Arizona state retirement system quarterly
24 newsletters immediately following the effective date of this act.

25 2. In two successive annual statements for individual members
26 immediately following the effective date of this act.

27 Sec. 5. Emergency

28 This act is an emergency measure that is necessary to preserve the
29 public peace, health or safety and is operative immediately as provided by
30 law.

APPROVED BY THE GOVERNOR MAY 7, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2003.

Passed the House February 3, 2003,

Passed the Senate April 29, 2003

by the following vote: 57 Ayes,

by the following vote: 30 Ayes,

0 Nays, 1 Not Voting

0 Nays, 0 Not Voting

Jake Flake
Speaker of the House

Klu Blunt
President of the Senate

Norman L. Moore
Chief Clerk of the House

Chaimin Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

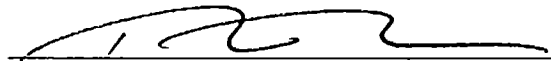
H.B. 2024

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 1, 2003,

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting
With Emergency

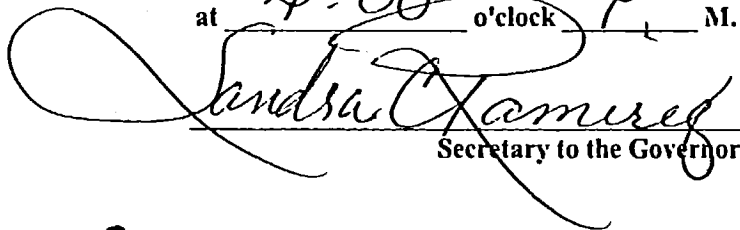

Speaker of the House
Pro Tempore
Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

1 day of May, 2003,

at 4:00 o'clock P. M.


Secretary to the Governor

Approved this 7 day of

May, 2003,

at 10⁰⁰ o'clock A. M.

Jon R. Noriega
Governor of Arizona

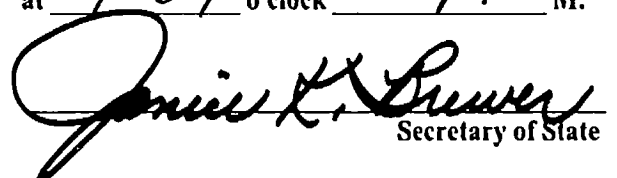
H.B. 2024

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 7 day of May, 2003,

at 4:09 o'clock P. M.


Secretary of State